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Sexual Offences Against Children: The Badgley Report

Donald Macdonald

Law and Government Division
Research Branch

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SEXUAL OFFENCES AGAINST CHILDREN:
THE BADGLEY REPORT

ISSUE DEFINITION

In 1978 the Law Reform Commission of Canada issued a report which recommended, inter alia, the revision of the criminal law in relation to sexual offences against children. It would have replaced the existing variety of offences by more general prohibitions of "sexual interference" with young persons, as well as the revision and repeal of a number of other offences which might affect children. In 1981, the government introduced legislation, Bill C-53, generally in conformity with the Commission's recommendations and which, in addition, also sought to deal with the production and distribution of pornography involving children. Those elements of the bill dealing with children became the subject of intense controversy, however, owing to concern about their potential scope, and were eventually deleted.

The Committee on Sexual Offences Against Children and Youths (known as the "Badgley Committee", after its chairman) was established in 1981 by the Ministers of Justice and National Health and Welfare. Its mandate was to inquire into the adequacy of the laws of Canada in providing protection to children from sexual offences and to make recommendations for improving that protection. It was also to ascertain the extent of exploitation of children in pornography and prostitution and to examine what role the law should play in attempting to stop that exploitation.

In August 1984 the Committee issued its report. It provides, for the first time, detailed information on some aspects of sexual offences against, or involving, children. Although it recommends

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extensive revision of the criminal law as do the Law Reform Commission's report and Bill C-53, in many respects its recommendations differ from and expressly disagree with those previous proposals. This review deals with four aspects of the Report: sexual offences; evidence and trial process; child prostitution; and child pornography, with primary emphasis on the Committee's legislative recommendations.

BACKGROUND AND ANALYSIS

A. Sexual Offences and Children

A principal conclusion of the Badgley Report is that the number of sexual offences involving children is "alarmingly high", and that they are committed so frequently and against so many persons "that there is an evident and urgent need to afford victims greater protection than is now being provided". This conclusion is based on the results of a National Population Survey undertaken by the Committee in conjunction with the Gallup organization, in which a representative sample of over 2000 Canadians responded to a detailed questionnaire as to their experience with "unwanted sexual acts". This Survey, made to try to remedy the lack of information about the actual incidence of sexual offences, was one of several undertaken when the Committee found that official statistics were not adequate for their purposes. Others included the National Police Force Survey, which gained information from 28 police agencies across the country about how offences against children were processed and investigated; and the National Hospital Survey, which studied how the victims of such offences were treated at 11 major hospitals.

The chief findings of the National Population Survey include the following: that, at some time during their lives, 1 in 2 females and 1 in 3 males are victims of "unwanted sexual acts" (defined to include: being exposed to, being sexually threatened, being sexually touched, or being the victim of an attempted or completed sexual assault); that four-fifths of these incidents occurred when the person was under 18; that assistance is only irregularly sought, allowing the authorities to deal only with a fraction of the cases; and that a majority of the acts are committed by

persons already known by the victim (from parents to acquaintances) and often in or near the victim's home. The Survey, and other research findings revealed that the harms associated with the unwanted sexual acts are principally emotional and psychological. It was also determined that the incidence of such acts has not increased or decreased appreciably in recent years, when population growth is taken into account, but has remained consistently high.

The Committee takes these findings very seriously. It expressly disagrees with two views about sexual activities with children that have some currency. The first is that such activities are, in themselves (and apart from genuine assault) essentially not harmful to children, who are, rather, harmed by societal and parental reaction. The second is that restrictions on the sexual conduct of children, particularly on their capacity to consent, are infringements of their "sexual rights". These views are harshly rejected by the Committee. Sexual acts with children are intrinsically harmful and usually in an enduring way; and support for their sexual autonomy is described as "transparent, dangerous and intellectually dishonest". On the contrary, the special needs and vulnerabilities of children must be better protected by a strengthened criminal law, which more precisely targets forbidden conduct, has a sharper deterrent edge and better communicates its contents to the public. To this end the Report sets out a series of detailed proposed amendments to the substantive criminal law.

1. Sexual conduct with young persons

The Report is in accord with both the Law Reform Commission (hereinafter the "LRC") and Bill C-53 that there should be a new criminal offence of unlawful sexual conduct with children. The basis for this type of offence is that non-assaultive sexual conduct with children is still wrong because their ability to consent to such activity is not in any way informed and complete. The present Criminal Code deals with such conduct only very elliptically, with the very specific sexual intercourse offences, the very vague offence of gross indecency (which may not cover all acts), or the inappropriate sexual assault offences, which should not apply to "consensual" acts.

Recommended is an offence of touching a person under 16 "for a sexual purpose" in the "genital or anal region with any part of his or her body or with any object". The offence would be indictable, punishable by up to 14 years' imprisonment where the child is under 14 years of age, and 10 years where the child is between 14 and 16. The child's consent, or the accused's belief that he or she was older, would be no defence. The Report's offence would be more specific than those suggested by the LRC or Bill C-53, which made reference only to "sexual touching" or "sexual misconduct", respectively.

The proposed offence of sexual touching would overlap, in a somewhat anomalous fashion, with existing sexual assault offences. For example, sexual touching of a child under 14 would have a higher maximum sentence - 14 years - than would "simple" sexual assault, which is punishable only by up to 10 years' imprisonment and which, indeed, can be a summary conviction offence. One potential unusual result would be a plea-bargain "down" from sexual touching to sexual assault. Further, while a person over 14 is deemed capable of giving consent to a sexual assault under existing law (subject to restrictions not relevant here), the proposed offence would render persons incapable of giving consent to sexual touching until 16 years of age.

2. Unlawful sexual intercourse

Unlike the LRC and Bill C-53, the Badgley Report would retain the offences of unlawful sexual intercourse in s.146 of the Criminal Code. The repeal of that section has been proposed because the conduct with which it deals could be covered by offences of sexual assault and unlawful sexual conduct (described above). Sexual intercourse is merely one form of sexual contact falling within the proposed definitions, and it is unnecessary to retain an "act-specific" offence referring only to females as victims.

The Committee disagrees with this reasoning, holding that retention of this type of offence is justifiable where there are demonstrable harms which can befall one particular part of society - in this case young females. It cites research findings on sexually-transmitted diseases and on the dangers of early pregnancy. Presumably, since

sexual intercourse is so potentially damaging to young females, it deserves specific prohibition and separate penalization.

The Report would reduce the maximum punishment from life imprisonment to 14 years in respect of s.146(1) (intercourse with a girl under 14), and remove the anachronistic defences (i.e. lack of "chaste character"; being "less to blame") in s.146(2) (intercourse with a girl between 14 and 16). Also, s.140 would be amended raising the age at which consent would be no defence from 14 to 16, and s.147 would be repealed. That section deems a male under 14 incapable of an offence pursuant to s.146. The repeal would mean that the general age of criminal responsibility - 12 - would apply.

The Special Committee on Pornography and Prostitution (the "Fraser Committee") in its April 1985 report, has recommended that ss. 146 and 151 to 153 of the Code be amended to apply also to males. Further, the requirement that a victim be of "previously chaste character", (in some provisions) should be deleted. These recommendations were linked to the Committee's findings on prostitution. Some provincial courts have held that the sexual intercourse offences offend the Charter's guarantee of equality, because only males can be convicted.

3. Abuse of authority or dependency

Common to all proposals in this area is the suggestion that there should be a specific offence of sexual conduct with children by persons in a position of authority over them or upon whom the children are dependent in some way. This offence would replace the current hodge-podge of prohibitions, affecting only a limited range of potential defendants, of sexual intercourse and seduction by parents or guardians. The Report would make it an offence for a person in a "position of trust" to sexually touch a person under 18 on pain of up to 10 years' imprisonment. Consent would be no defence and a position of trust would be deemed to exist where a broad variety of relationships between the adult and the young person, from parent to employer, exist; including such persons as teachers and boarders in the child's home.

4. Incest

In 1978 the LRC proposed that the offence of incest (sexual intercourse with a grandparent, parent, child, or sibling) be repealed. It reasoned that other sexual offences could deal with violent incest or cases where a parent abused his control over his child. It saw no validity in the genetic case against incest and felt that the conduct should not be dealt with in the criminal courts, but as a child welfare matter. Consensual adult incest would not be criminal.

In Bill C-53 the government refused to accept this proposal and the Badgley Committee strongly rejects it. The Report devotes an entire chapter to the question of the genetic risks involved in incest, concluding that there is ample proof that incestuous unions run a very high risk of defective offspring. It is agreed that some cases should not be criminally prosecuted, but the Report insists that the criminal sanction and the power of immediate intervention which it permits, must be available to allow the authorities to intervene when necessary. In some cases it is the only way in which to remove the offender and spare children further damage. Thus, retention of the offence is proposed, with some minor amendments.

5. Exposure and "invitation" cases

Survey findings of the Committee established that acts of exposure are very common. The Report rejects the view that such conduct is no more than an unavoidable nuisance. Not only is it socially unacceptable, but the social and psychological consequences for child victims are not clear. Proposed is a specific prohibition of exposure of genitals to a child under 16, punishable on summary conviction, in addition to the existing offence of performing an indecent act (s.169).

The Report also identifies what the Committee feels is a gap in the criminal law in this area. This is a significant number of cases in which persons "invite" children to touch them for sexual purposes. This conduct is neither assault (since the child is not touched or threatened), nor, in many circumstances, does it fall within the

indefinite scope of the offence of gross indecency. Recommended is an offence of inviting, counselling, or causing a child (under 14) to touch that person's (or another's) body for sexual purposes. It would be an indictable offence punishable by up to 5 years' imprisonment.

6. Consequential and other amendments

The Committee proposes the repeal of a number of offences, such as seduction and illicit sexual intercourse, which would be unnecessary if its other recommendations are accepted. One such proposed repeal may be controversial, however. That involves the offence of gross indecency (ss. 157, 158 of the Code). The Report appears to proceed on the assumption that the offence is maintained to deal with the sexual abuse of children and hence would no longer be needed if its proposed unlawful sexual conduct offence were in place. But the offence is not so limited and is used on occasion in respect of adults, in particular against "semi-public" homosexual conduct. Although many would agree that gross indecency should no longer apply to that conduct, others would suggest that the recommendation goes beyond the Committee's mandate. The Fraser Committee has also recommended that the offence of gross indecency be repealed, at least with respect to consensual acts among adults over 18. It also recommends the lowering of the age of consent to buggery to 18 years of age.

The Badgley Report recommends that buggery remain an offence but that the age of consent should be lowered from 21 to 18. The offence of bestiality would also be retained, with additional prohibitions of inciting, procuring, counselling or performing the act in the presence of a person under 18. The offence of communicating a venereal disease is adjudged unenforceable and would be repealed. In its place is recommended a program of improved research and reporting of sexually transmitted diseases. Amendment is recommended of s. 175, dealing with loitering by convicted sexual offenders, to remedy an anomaly which has rendered the provision unenforceable because of a drafting error and of Part XXI of the Code, which deals with the sentencing of dangerous offenders, to ensure that it has broader application to those who commit sexual offences against children. Section 175 was amended to correct the drafting error in 1984;

and a further amendment which ensures that the section takes into account offences under the old sexual assault terminology is included in Bill C-18, the proposed Criminal Law Amendment Act, 1985.

7. Sexual relations between young persons

Throughout, the Report is extremely critical of a recent amendment to the Criminal Code. Subsection 246.1(2) was added in 1983 as part of the sexual assault changes. It stipulates that the consent of a person under 14 is not a defence to any of the three types of sexual assault (ss. 246.1(1); 246.2; 246.3) unless the person accused is less than 3 years older than the person under 14. Effectively subs. 246.1(2) validates the consent of a child, which would otherwise be of no importance, where the other person is close in age.

The Report finds that this provision legislates the idea that a young person can "consent" to violence against his or her self, since it not only includes reference to "simple" sexual assault, but also to sexual assault with a weapon or causing bodily harm, and - to the most extreme form - aggravated sexual assault, which involves wounding, maiming or disfigurement. The Report calls this a "major legislative oversight", which may have had the effect of actually protecting children less than adults, since the common law places limits on the degree to which a person can be said to "consent" to the infliction of harm. Subs. 246.1(2) does not, for persons under 14.

The Report is also very critical of the supposed basis for the provision - that sexual conduct between children close in age is not exploitative, or necessarily damaging, and thus should not be criminal. It contends that the amendment was passed in an "informational vacuum", and presents survey findings and other statistical evidence purporting to show that assailants less than three years older are more likely to use threats or violence. The exact relevance of these findings is problematic, however, since subs. 246.1(2) does not exempt non-consensual activity. But the Report goes on to state that the exemption may have an adverse effect on the prosecution process, by putting the emphasis to an inordinate degree on the presence or absence of consent, influencing prosecutorial decisions. The Committee is not opposed to flexibility in this area, but

is against such a codified exemption. Where there is a genuine case of non-coercive sexual experimentation, the decision can always be taken not to prosecute or the presiding judge can deal with it at sentencing. The Report proposes that subs. 246.1(2) be repealed, insofar as it exempts persons less than three years older.

B. Evidence and Trial Process

Extensive reform of the substantive criminal law in this area would come to naught if an offence cannot be proven in court. And a major obstacle to such proof are the rules as to children's testimonial capacity. Essentially a child's evidence can only be unqualifiedly accepted if he or she is found by the court to understand the nature of an oath. If the child cannot take an oath, unsworn testimony is acceptable if he or she is found to be sufficiently intelligent. But such unsworn evidence requires corroboration (i.e. some other material evidence supporting the testimony) by virtue of s.586 of the Criminal Code. Even where sworn, the judge must warn a jury as to the possible unreliability of a child's testimony, if it is not also corroborated. In addition, some specific offences have special corroboration requirements.

The Report disagrees with the fundamental assumption that children's evidence is inherently unreliable owing to lack of sophistication or frailties in perception. It purports to present research findings that belie conventional thought on this issue. But those findings amount to little more than the conclusion that police and health workers tend to believe, and act upon, complaints made to them by young children. It is arguable that these findings are not at all cogent as to whether a court of law would, or should, find children credible.

Irrespective of whether or not one considers these research findings compelling, the Committee's recommendations may be of considerable worth. It contends that the cogency of a child's testimony, like any other form of evidence, should be a question of weight and not admissibility. The Report would do away with the rules as to sworn and unsworn testimony, and would allow the trier of fact to determine the weight to be given to it, in all the circumstances. A child who could not understand simply

framed questions could not testify. The cautionings and corroboration requirements of the present law would also be done away with. Thus the taint of virtual presumptive inadmissibility of some children's evidence would be removed.

The Report also proposes that the repeal in 1983 of the doctrine of recent complaint with respect to sexual assault be extended to apply to all sexual offences, including non-assaultive conduct with children. Similarly, the restrictions on questioning of victims as to previous sexual conduct should be extended beyond cases of sexual assault. The Canada Evidence Act would be amended to allow a discretion to admit a child's hearsay evidence (i.e. evidence of what a child has said to an adult) where there are "sufficient indicia of reliability" in the time, content and circumstances of the statements in issue. That Act would also be amended to stipulate that the non-disclosure privilege with respect to communications between spouses should no longer be claimable where such spouses are otherwise competent and compellable witnesses (i.e. in cases of sexual offences involving children).

On trial process, the Committee recommends that judges of both criminal and child welfare courts be given (in cases involving sexual offences and children) a discretion to exclude the public on the specific ground that such a course is required in order to obtain a full and candid presentation of a child's testimony. In addition, the Committee would enact stronger prohibitions against the publication of the names of children involved in sexual offence cases, including any information "serving to identify the child". Special court officers would be appointed to ensure compliance with these restrictions.

The Fraser Committee has also made recommendations in this area. It agrees that every child should be held competent to testify, and that the weight of such evidence should be determined by the trier of fact. In addition, corroboration requirements should be repealed. However, that committee would not relax the law in relation to the reception of hearsay evidence of a child.

C. Child Prostitution

The principal source of the Committee's information with respect to juvenile prostitution was a survey conducted among 229 prostitutes under 20 years of age in 8 Canadian cities. They were extensively questioned as to their backgrounds and the circumstances of their lives on the street. Among the findings of the survey were the following. They came from all levels of society, mostly from middle-class families. Alcohol, drug, or sexual abuse, although contributing factors, were not universally present in their lives before turning to prostitution. Other factors such as family problems, discontent with school and the inability to find employment played a large part. Once on the street, however, alcohol and drug abuse increased, they contracted venereal diseases, became the victims of violence and often became involved in other criminal activity. Few juvenile prostitutes contravened the existing soliciting laws.

The Committee found there was a "stark paradox" between society's expressed concern about juvenile prostitutes and the actual number of services and ameliorative programs in existence to assist them. Indeed, during the time of its study, some such programs had been curtailed or terminated. It found that the problem could only be contained if there was public acknowledgement of the broader social issues which created it and action on issues such as the provision of relevant career alternatives to youth.

Nevertheless, the criminal law has a role to play, in the Committee's opinion. The Report takes the view that whatever "helping services" are available are rendered useless by the refusal of youths to co-operate with them. It concludes that there must be a workable means available of intervening to detain juvenile prostitutes so that they can be helped. While some members of the Committee disagreed, the Report recommends that there should be a new summary conviction offence making it illegal for a person under 18 to "offer, provide, or agree to provide" or to engage in a sexual act for money. This would allow for the arrest of juvenile prostitutes.

The adults who seek out young prostitutes would be subject to severer penalties. Another new offence would prohibit offering money

for sexual acts to a person under 18. The offence would be indictable, punishable by up to 2 years' imprisonment. The defence of belief that the prostitute was older would not be available. In addition, a program is recommended to give wide publicity to names of adults convicted of seeking juvenile prostitutes.

The Report found that juvenile prostitutes in Canada are seldom controlled by large-scale organized rings. It is the case, however, that a majority of female child prostitutes are under the domination of pimps, usually young adult males. The Committee found that these pimps provide little or no protection for the girls and, indeed, are almost invariably violent toward them. They take virtually all their money and often supply the prostitutes with drugs. The Committee described the parasitic pimp-juvenile prostitute relationship as "ruthless psychological and economic exploitation" and "one of the most severe forms of abuse of children and youths, sexual or otherwise, that currently occurs in Canadian society". The response of the criminal law should be certain and severe - the provisions of the Criminal Code with respect to procuring and living on the avails of prostitution should be strengthened by eliminating barriers to prosecution and limitation periods and by imposing minimum mandatory two-year sentences on those convicted of procuring or living on the avails with respect to persons under 18. In addition the Report recommends the establishment of specially-funded units to facilitate the investigation and charging of pimps.

In addition to changes to the criminal law, the Committee also recommends the establishment of protection services, counselling and job-training for children now caught up in prostitution; as well as an extensive program of education as to the risks associated with prostitution.

The Fraser Committee has made recommendations on child prostitution somewhat different from those of the Badgley Committee. Although it recommends relaxation of the bawdy house laws to permit provincially regulated "prostitution establishments", persons under 18 would not be permitted to be employed therein. It would be an offence for anyone to engage in, attempt, or offer to engage in sexual activity for

money or other consideration or reward with a person under 18. There would be no defence of honest belief that the person was older; and punishment, on indictment, would be up to five years' imprisonment. It would also be unlawful to "persuade, coerce or deceive" a person under 18 to start or to continue to engage in prostitution, or in illicit sexual conduct; and it would be an offence to support one's self in whole or in part from the proceeds of the sexual activities of a person under 18. Both of these offences would be punishable by up to 14 years' imprisonment.

The Fraser Committee expressly disagrees with Badgley that the mere act of prostitution by a young person should be criminalized. Fraser rejects the view that such an offence would, in any effective way, bring the young person into contact with social services that might help him or her. Young persons would, however, be subject to the Committee's proposed new soliciting offence - essentially, interfering, or attempting to interfere with pedestrian or vehicular traffic on more than one occasion, for the purpose of offering to engage in prostitution. They would be prosecuted under the Young Offenders Act. Bill C-49, embodying amendments to the Criminal Code with respect to prostitution, was passed in the First Session of the 33rd Parliament and came into force on December 28, 1985. It prohibits communication in public places for the purpose of prostitution, as well as obstruction of pedestrian or vehicular traffic for such a purpose, and applies to all persons over 12 years of age.

D. Children and Pornography

The Committee looked into two aspects of the relationship between children and pornography: the degree to which children were actually exploited in the production of pornography and how much existed in Canada; and the degree of access which children have to pornography in general and the effect it has on them.

The Report found that there is no empirical support for the claim that child pornography, as is often alleged, has reached "epidemic" proportions. It found that there is little child pornography in Canada. What there is, is mostly imported. Of over 29,000 seizures made by customs officials of obscene materials between 1979 and 1981, only a tiny proportion (1.3%) was child pornography. There does exist a significant

amount of "pseudo-child pornography" (which uses adults who appear to be children), but that sort of material does not directly exploit children.

There is also virtually no commercial production or distribution of child pornography in Canada. There does exist an informal and fragmented system of private production, one primarily undertaken to serve the sexual gratification of those producing it. Where attempts have been made to start such commercial production, the authorities have been able to deal with it using existing obscenity laws.

Notwithstanding the relatively limited scale of child pornography in Canada, the Report recommends legislative action. While the present amount of such material may be small, technological changes in communications have the potential to make its distribution more easy and more profitable. Further it is only through "base and coldly premeditated exploitation of a young person's sexual vulnerability" that child pornography can be made. To the extent that there is any production in Canada, it should be severely dealt with. The Report accordingly recommends the creation of a new criminal offence - using, inciting, coercing or agreeing to use a person under 18 to participate in the production of a "visual representation" of "any explicit sexual conduct". This latter phrase is defined to include vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour and "lewd" touching or "lewd" exhibition of breasts or genitals. Participating in the production of such material, and activity associated with its manufacture and sale or distribution would also be illegal. All of the foregoing would be indictable offences punishable by up to 10 years' imprisonment.

A further, and controversial, recommendation is that simple possession of child pornography be made a summary conviction offence. Apparently some members of the Committee opposed this recommendation out of a concern about intrusion into privacy and censorship. The majority, however, found it to be the logical extension of the chain of legal sanctions - if the market for child pornography is curtailed, production should also be affected. The lesser moral culpability of a simple possessor is reflected by the fact that he is only punishable on summary conviction.

Bill C-53 had contained a quite similar proposal to deal with the "visual representation of sexually explicit conduct of young persons". It did not, however, contain a definition of that conduct comparable to that proposed by the Committee, a fact which ultimately led to its rejection, owing to a concern about the scope of the prohibition. The proposal in Bill C-53 also only applied to the use of children under 16 and did not contain an offence of simple possession.

With respect to the importation of child pornography, the Report recommends a more systematized and focussed effort by Customs and prosecutorial authorities to cut off the importation of the material. Administrative changes are suggested which would spread information about particular materials more effectively throughout the system. In addition the Customs Tariff, and the Customs, and Canada Post Corporation Acts would be amended to incorporate specific reference to the newly prohibited forms of child pornography as being subject to interdiction.

The findings of the Report with respect to the access of children to, and the effects on children of, pornography are tentative. Empirical findings as to the effects of pornography are at best inconclusive. In its research the Committee found that in some cases of child abuse the offender was found to have pornography; but that a cause and effect relationship is not provable. It urges more research on this question.

The issue of access to pornography by children is easier to approach. A survey found that an overwhelming majority of Canadians believed that children should not have access to pornographic materials. Existing restrictions are uneven or non-existent. Some provinces and municipalities have acted on the question while others have not. Even where action has been taken, often the restrictions are not enforced. The Committee concludes that it is necessary to have a national standard. It thus proposes a new criminal offence of displaying, selling or offering to sell visual pornographic materials to persons under 16. The offence would be punishable on summary conviction.

The Fraser Committee recommends new offences of inducing, inciting, coercing, using, or agreeing to use a person under 18 in a visual

representation of "explicit sexual conduct", which is defined as including:

...any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sexually violent behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted.

Inducing another person to use a young person in this way, participation in such a visual representation, and the making, printing, publication, distribution, or possession for those purposes, would all be indictable offences punishable by up to 10 years' imprisonment. In addition, those involved in the sale, rental or exposure to public view of such material would be guilty of a hybrid offence, punishable on indictment by up to five years. Finally, simple possession of such material, without lawful justification or excuse, would be a summary conviction offence.

A similar set of offences would apply to visual, written or recorded matter which "advocates, encourages or presents as normal" the sexual abuse of children. This would also apply to live shows. Other new offences would include: the use of the mails to send child pornography of either kind described above; and an offence of selling, renting, or offering to sell or rent visual pornographic material to persons under 18; displaying such material in such a way that it is accessible to young persons; or allowing a young person access to a theatre showing visual pornographic material. With respect to these "display" offences, defences of due diligence in attempting to exclude young persons, educational or scientific purpose, and adult classification by a provincial or territorial review body, would be available defences.

E. Recent Developments

On October 29, 1986 the Minister of Justice introduced Bill C-15 for first reading in the House of Commons. That Bill would make amendments to the Criminal Code and to the Canada Evidence Act generally in accord with the recommendations of the Badgley Committee. Among the proposals are the following:

- ° New offences of "sexual interference" (direct or indirect touching for a sexual purpose); invitation to sexual touching (both involving persons under 14); and sexual exploitation (sexual touching or invitation thereto for a sexual purpose) against persons from 14 to 18 by a person in a position of trust or authority.
- ° Restriction of the "less than three years older" defence to situations where the accused is 12 or 13, and where there is no abuse of trust or authority.
- ° Repeal of the sexual intercourse offences.
- ° Reduction of the age of consent to buggery from 21 to 18.
- ° Repeal of the offence of gross indecency; and new offences of compelling a person to commit bestiality, and committing bestiality in the presence of a person under 14.
- ° New offence of the exposure of genital organs to persons under 14.
- ° Provisions concerning the admissibility of video-tape evidence of a child taken shortly after the incident; and the removal of corroboration requirements for children's evidence, as well as new procedures for determining the testimonial capacity of children.

The Bill also would have made some amendments concerning child prostitution. Living off the avails of a prostitute under 18 years of age would be punishable by a maximum 14 years' imprisonment (as opposed to a maximum of 10 years, which is the existing penalty for living off the avails); and a new offence of obtaining or of attempting to obtain, for consideration, the sexual services of a person under 18 would be punishable by up to 5 years' imprisonment.

Committees of both the Senate and the House of Commons began studying Bill C-15 in November, 1986.

PARLIAMENTARY ACTION

A. Bill C-53 (Second Reading, December 17, 1981)

Bill C-53 dealt with a wide range of criminal matters including sexual assault, parental kidnapping, sexual conduct with children and child pornography. These latter two subjects became a subject of intense controversy when the Bill was in committee in the summer of 1982. Eventually the government deleted them from a new Bill C-127 dealing with sexual assault and Bill C-53 died on the Order Paper.

B. Bill C-19 (First Reading, February 7, 1984)

Bill C-19 was an omnibus Criminal Code amendment bill. It would have amended the soliciting law to ensure that clients could be charged and that an automobile could be considered a public place. In addition, the obscenity provisions would have been amended to broaden the concept of obscenity beyond solely sexual matters and to include reference to "degradation". The bill did not proceed beyond first reading.

C. Bill C-49 (First Reading, May 2, 1985)

This Bill replaced existing s. 195.1 with a new offence prohibiting interference with vehicular or pedestrian traffic, or the communication with other persons, for the purpose of engaging in prostitution or of obtaining a prostitute's services. The amendment was passed by Parliament and came into force in December 1985.

D. Bill C-15 (First Reading, October 29, 1986)

This Bill would amend the Criminal Code and Canada Evidence Act in accordance with many of the recommendations of the Badgley Report. It is virtually identical to Bill C-113, from the First Session of the 33rd Parliament, which died on the Order Paper in August 1986, after having been introduced in June.

CHRONOLOGY

- November 1978 - The Law Reform Commission of Canada issued a report on Sexual Offences, proposing extensive reform of the criminal law having to do with, inter alia, sexual conduct with children.
- 12 January 1981 - Bill C-53, containing extensive proposed amendments to the Criminal Code on sexual conduct with children and child pornography was given first reading in the House of Commons.
- 16 February 1981 - The Badgley Committee was established. Originally to report on the sexual abuse of children in two years, the Committee's mandate was later extended.
- 17 December 1981 - Bill C-53 was given second reading in the House and referred to the Standing Committee on Justice and Legal Affairs.
- 28 July 1982 - The Justice Committee completed its four-month consideration of Bill C-53, without dealing with the provisions on sexual misconduct and child pornography.
- 23 June 1983 - The Fraser Committee was appointed by the Justice Minister to study prostitution and pornography.
- 7 February 1984 - Bill C-19, an omnibus Criminal Code amendment bill, making minor changes in the obscenity and prostitution law, was given first reading in the House.
- 22 August 1984 - The Report of the Badgley Committee was released.
- 23 April 1985 - The Report of the Fraser Committee, on prostitution and pornography, was released.
- 28 December 1985 - Bill C-49, the new anti-street prostitution legislation, came into force.
- 29 October 1986 - Bill C-15 which would extensively amend laws dealing with sexual abuse of children, was given first reading in the House.

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